

1  
2  
3  
4  
5  
6                   UNITED STATES DISTRICT COURT  
7                   WESTERN DISTRICT OF WASHINGTON  
8                   AT TACOMA

9                   MICHAEL JEFFERSON,

10                  Plaintiff,

11                  v.

12                  MARGARET GILBERT, et al.,

13                  Defendants.

14                   CASE NO. 19-5121 RJB-DWC

15                   ORDER ADOPTING REPORT AND  
16                   RECOMMENDATION

17                  THIS MATTER comes before the Court on the Report and Recommendation of U.S.  
18                  Magistrate Judge David W. Christel. Dkt. 106. The Court has considered the Report and  
19                  Recommendation, Plaintiff's objections, and the remaining file.

20                  On November 12, 2020 the instant Report and Recommendation was filed,  
21                  recommending that the Plaintiff's case be dismissed because of the Plaintiff's failure to exhaust  
22                  all administrative remedies available to him. Dkt. 106. The Plaintiff filed objections to the  
23                  Report and Recommendation. Dkts. 109, as amended 110.

24                  The Report and Recommendation should be adopted (Dkt. 106) and the case dismissed.  
25                  The Plaintiff's objections do not provide grounds to fail to adopt the Report and  
26                  Recommendation. The Plaintiff's objections on the merits of his claims are not relevant to the  
27                  issue before the Court: whether he properly exhausted his administrative remedies. The Plaintiff  
28

1 acknowledged in his Objections that it took him 2 ½ years to file a grievance as to the loss of his  
2 eye. His temporary inability to use his left eye (for a month) does not excuse his failure. As  
3 stated in the Report and Recommendation, the Plaintiff's assertion, that he couldn't file a  
4 grievance about this incident because he was told "no," is belied by the record which  
5 demonstrates that he did file grievances about other issues, before and after the event. His  
6 assertion that the loss of his eye is a continuing constitutional violation is unpersuasive because it  
7 would render the time limits imposed by regulation and statute a nullity. Under this theory, he  
8 could file a grievance at any time forever.

9 The Plaintiff's reference to various discovery issues, general dislike of the use of  
10 affidavits and declarations in a motion for summary judgment, and claim that there is a potential  
11 conflict of interest "in regards [sic] to attorneys and a person in the court" are all equally  
12 unavailing. The Report and Recommendation (Dkt. 106) should be adopted.

13 | It is **ORDERED** that:

- The Report and Recommendation (Dkt. 106) **IS ADOPTED**; and
- This case **IS DISMISSED WITH PREJUDICE**.

16 The Clerk is directed to send uncertified copies of this Order to U.S. Magistrate Judge  
17 David W. Christel, all counsel of record and to any party appearing *pro se* at said party's last  
18 known address.

19 Dated this 21<sup>st</sup> day of December, 2020.

Robert F. Bryan

ROBERT J. BRYAN  
United States District Judge